

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

GARY DWAIN SPIER,	§	
TDCJ-CID NO.1137372,	§	
Petitioner,	§	
VS.	§	CIVIL ACTION NO. H-04-2274
	§	
DOUG DRETKE,	§	
	§	
Respondent.	§	

ORDER

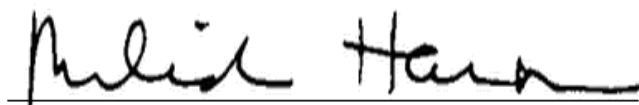
On July 5, 2005, the Court entered a judgment dismissing petitioner's habeas action without prejudice for failure to exhaust all available remedies to the state's highest court of criminal jurisprudence. (Docket Entries No.21, No.22). On July 19, 2005, petitioner filed a motion to extend time to file a notice of appeal. (Docket Entry No.23).

Ordinarily, a party in a civil case must file a notice of appeal within thirty days after the judgment or order appealed from is entered. FED. R. APP. PROC. 4(a)(1)(A). The Court may extend the time prescribed by the Rules of Appellate Procedure for good cause except for the time to file a notice of appeal as prescribed by Rule 4 of the appellate rules. FED. R. APP. P. 26(b)(1). Rule 4(a)(5) permits the district court to extend the deadline for filing a notice of appeal upon a showing of good cause or excusable neglect if the party moves for an extension within thirty days after the expiration of the appellate time period. FED. R. APP. PROC. 4(a)(5)(A). "[R]egardless of whether its motion is filed before or during the 30 days after the

time prescribed by this Rule 4(a) expires, that party [must] show[] excusable neglect or good cause.” R. 4(a)(5)(A)(ii).

The Court entered its judgment dismissing the case on July 5, 2005; therefore, under Rule 4, the last day petitioner could file a timely notice of appeal is August 4, 2005. Petitioner filed his motion for an extension on July 19, 2005, before the August 4th deadline. Petitioner indicates that good cause exists for granting an extension because he is in close custody and has limited access to legal materials and paper, and no access to a copier. Petitioner is also awaiting paperwork from the mail room at the Boyd Unit of TDCJ-CID, which he claims is crucial to his appeal. (Docket Entry No.23). Because he lacks access to legal materials and adequate indigent supplies due to circumstances beyond his control, the Court GRANTS petitioner’s motion for a thirty day extension to file his notice of appeal. (Docket Entry No.23). Petitioner shall file a notice of appeal no later than August 18, 2005.

SIGNED at Houston, Texas this 26th day of July, 2005.

A handwritten signature in black ink, appearing to read "Melinda Harmon", written over a horizontal line.

Melinda Harmon  
United States District Judge